

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SAN AGUSTIN,

Plaintiff,

v.

A. K. SCRIBNER, Warden; A.  
QUINONES, Institutional Gang  
Investigator,

Defendants.

No. C 08-4660 PJH (PR)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS AND DENYING THEIR  
MOTION FOR SUMMARY  
JUDGMENT AS MOOT;  
DISMISSAL WITH LEAVE TO  
AMEND**

This is a civil rights case filed pro se by a state prisoner. Defendants have filed a motion to dismiss and for summary judgment. In an earlier ruling the court granted defendants' motion for a stay of discovery and said that it would rule on the motion to dismiss first, making discovery unnecessary at that time, and that the motion for summary judgment would not be reached unless it were denied as moot. In that order plaintiff's motion for an extension of time to oppose the defendants' motions was granted, but plaintiff has not opposed the motion and the time to do so has expired.

For the reasons set out below, the motion to dismiss will be granted. Because it will be granted and the complaint dismissed with leave to amend, the motion for summary judgment will be denied as moot.

**DISCUSSION**

**I. Standard**

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the

1 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of  
3 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;  
4 the statement need only "give the defendant fair notice of what the . . . claim is and the  
5 grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations  
6 omitted). Although in order to state a claim a complaint "does not need detailed factual  
7 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'  
8 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
9 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
10 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65  
11 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief  
12 that is plausible on its face." *Id.* at 1986-87. The United States Supreme Court has  
13 recently explained that the "plausible on its face" standard of *Twombly* means that "[w]hile  
14 legal conclusions can provide the framework of a complaint, they must be supported by  
15 factual allegations. When there are well-pleaded factual allegations, a court should  
16 assume their veracity and then determine whether they plausibly give rise to an entitlement  
17 to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

18 In ruling on a motion to dismiss for failure to state a claim, review is limited to the  
19 contents of the complaint, *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir.  
20 1994), including documents physically attached to the complaint or documents the  
21 complaint necessarily relies on and whose authenticity is not contested. *Lee v. County of*  
22 *Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). In addition, the court may take judicial  
23 notice of facts that are not subject to reasonable dispute. *Id.* at 688 (discussing Fed. R.  
24 Evid. 201(b)). Allegations of fact in the complaint must be taken as true and construed in  
25 the light most favorable to the non-moving party. *Spreewell v. Golden State Warriors*, 266  
26 F.3d 979, 988 (9th Cir. 2001). The court need not, however, "accept as true allegations  
27 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."  
28 *Id.*

1 **II. Analysis**

2 **A. Injunctive Relief Claims**

3 Defendants claim that plaintiff's injunctive relief claims are barred by the statute of  
4 limitations. They are correct, and plaintiff, who has not opposed the motion, has of course  
5 provided no basis for avoiding the bar. The injunctive relief claims will be dismissed with  
6 prejudice.

7 **B. Defendant Scribner**

8 As defendant Scribner contends, the complaint contains no facts alleging any  
9 involvement by him in the alleged violations of plaintiff's rights. Plaintiff thus has failed to  
10 state a claim against Scribner.

11 **C. Defendant Quinones**

12 Plaintiff's claims are that his gang validation was predetermined and based on  
13 "bias," that he did not receive proper notice of the gang validation charges, and that the  
14 gang validation was not supported by sufficient evidence. Defendant Quinones was the  
15 "IGI," the Institutional Gang Investigator, who performed the validation.

16 Quinones is correct that plaintiff alleges only that he did not receive adequate  
17 notice of the confidential information upon which the validation was based, rather than that  
18 he did not receive proper notice of the gang allegation itself. The Constitution requires only  
19 notice of the charges, not the evidence upon which they may be based. *See Hewitt v.*  
20 *Helms*, 459 U.S. 460, 476 (1983). Plaintiff has failed to state a claim that his due process  
21 rights were violated by inadequate notice.

22 As to the bias and predetermination claim, the facts alleged – that Quinones said in  
23 a written note in the investigative file that plaintiff should be monitored for gang activity as a  
24 result of having written to a known gang member, and that "a validation packet will be  
25 submitted to [higher authorities] upon completion" – are not sufficient to make it plausible  
26 that Quinones had predetermined the issue. It was reasonable for him to expect to submit  
27 a validation packet to those who would decide if plaintiff were a gang member, given the  
28 evidence already developed, as was the suggestion that plaintiff should be monitored for

1 gang activity. Plaintiff has failed to state a claim that Quinones had predetermined his guilt.

2 Finally, plaintiff's own contentions in the complaint show that "some evidence"  
3 supported the decision, given that the complaint and the exhibits submitted in support of it  
4 describe several source items to support the validation; plaintiff contends that all of the  
5 items have weaknesses as evidence, but this does not prevent them from meeting the  
6 minimal "some evidence" standard. See *Superintendent v. Hill*, 472 U.S. 445, 457 (1985)  
7 ("some evidence" standard is "minimal").

8 For the above reasons, the motion to dismiss will be granted. The dismissal will be  
9 with leave to amend, because plaintiff may be able to allege additional facts that would  
10 state a claim. The motion for summary judgment, which is directed to the complaint that is  
11 dismissed in this order, will be denied as moot.

#### 12 CONCLUSION

13 Defendants' motion to dismiss (document number 9 on the docket) is **GRANTED**.  
14 The injunctive relief claims are **DISMISSED** with prejudice; the other claims are  
15 **DISMISSED** with leave to amend. Defendants' motion for summary judgment (document 9)  
16 is **DENIED** as moot.

17 If plaintiff wishes to amend, he shall file an amended complaint on the court's form  
18 for prisoner section 1983 claims within thirty days of the date this order is entered. It must  
19 carry the docket number of this case and the words "Amended Complaint" on the first page,  
20 so it is not mistaken for an attempt to file a new case. The amended complaint completely  
21 replaces the original complaint, so it must contain all claims plaintiff wishes to present. See  
22 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Failure to file an amended  
23 complaint within the time allowed will result in dismissal of the entire case without further  
24 leave to amend.

25 **IT IS SO ORDERED.**

26 Dated: March 17, 2010.

  
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PHYLLIS J. HAMILTON  
United States District Judge

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